

that "the LENS system for pre-ordering unbundled loops . . . is unreliable" because of the difficulty in entering and staying signed onto the system, and problems of being locked-out.¹⁴

Nextlink has also found the CSR information provided by LENS to be inadequate and notes that LENS does not provide Local Service Itemization (LSI) summary information, although that information is available upon a non-electronic request.¹⁵ Nextlink concludes that "BellSouth appears unable or unwilling to meet its scheduled installation commitments when provisioning unbundled loops" and noted that in Tennessee a substantial number of service orders experience changed due dates and result in service disruptions.¹⁶

The LENS system in use in all the BellSouth states is the same. If it is insufficient to satisfy CLEC needs and the requirements of Section 271 in one state, it is therefore unable to satisfy the requirements of Section 271 in all states.

The BellSouth Brief makes much of the fact that the Louisiana Commission found that the OSS systems satisfied the requirements of section 251 and Section 271. However, the ALJ in Louisiana, the chief fact finder, was quite critical of the

¹⁴ See Ex parte letter in CC Dkt No. 97-208 to Magalie Roman Salas from Daniel Gonzalez, Director of Regulatory Affairs, Nextlink, November 19, 1997.

¹⁵ Id.

¹⁶ Id.

BellSouth systems. She concluded, among other things, that:

"BellSouth has not clearly demonstrated that its operational support systems provide the same kinds of information to competitors as they provide to BellSouth and that the interfaces are as user friendly to competitors as to BellSouth. . . . [BellSouth has the ability] to readily reserve telephone numbers through its OSS while the competitors are limited by LENS to reserving six telephone numbers at a time [and] competitors' orders through EDI are processed by BellSouth in batches, rather than immediately upon placement of the order. . . . The LENS system for pre-ordering is not set up to interact directly with a competitor's own operational support systems, and, instead, requires manual input." (Recommended decision at 26.)

While the ALJ's decision did not take into account the BellSouth demonstration witnessed by the Commission, the Commission's decision declined to address the ALJ's concerns about the continuing reliability for these systems.

Finally, ALTS notes that the Alabama Public Service Commission ruled October 16th concerning BellSouth's proposed SGAT that: " . . . BellSouth's OSS systems must be further revised to provide nondiscriminatory access to BellSouth OSS systems as required by § 251(c)(3) of the '96 Act" (Docket 25835 at 7). Furthermore, the Georgia Public Service Commission has ruled that BellSouth's current OSS performance data is inadequate, and must be substantially improved. With due respect to the Louisiana Commission's findings relating to OSS systems, the Commission cannot find the BellSouth systems adequate in one state when other state commissions have found the same systems to be

inadequate.

**B. BellSouth Has Not Established That it Will
Provide Unbundled Loops in a Nondiscriminatory
Manner in Compliance with Section 271(b)(2)(a)(ii).**

The BellSouth application raises a very troubling question with respect to the provisioning of unbundled loops. The brief states that "BellSouth provides CLECs access to the network interface device (NID) on an unbundled basis at the end users' premises as well as in combination with other subloop elements that BellSouth offers." (Brief at 48-49.) At the same time BellSouth argues that collocation is the Act's only statutory authorization for CLEC entry into BellSouth's premises.

As the Commission is well aware, the Eighth Circuit recently ruled that an incumbent local exchange carrier is not required to recombine unbundled network elements for a CLEC, and that the responsibility is on the CLEC to perform combinations. A number of parties have sought Supreme Court review of the Eighth Circuit's decision. No matter how the Supreme Court may ultimately rule in the appeal of the Eighth Circuit's decision, Congress could not possibly have intended for an unbundled loop to be cut from the NID absent a CLEC's request. The only purpose of separating the loop and the NID, unless specifically requested, would be anticompetitive harassment.

In its brief it is unclear whether BellSouth proposes to

take such action. The Commission could not and should not grant any Section 271 application unless and until the RBOC gives the Commission assurances in writing that when an unbundled loop is ordered, it will not separate the loop from the NID without specific instructions from the CLEC.

C. **BellSouth Has Failed to Show that It
Can Adequately Provision Unbundled Loops.**

While BellSouth has apparently not yet received requests for unbundled loops in Louisiana, it is clear from its experience elsewhere in its region that it has not shown that it is capable of provisioning unbundled loops in commercial volumes. The opposition filed October 20, 1997, by ACSI in the South Carolina petition demonstrates numerous difficulties in obtaining unbundled loops from BellSouth:

- Extended periods of disconnected service during cutovers accompanied by a failure to coordinate number portability. When this happens a customer has dial tone but cannot receive incoming calls
- BellSouth's failure to acknowledge orders and provide meaningful Firm Order Commitments ("FOCs").
- Unexplained post-cutover disconnects.¹⁷

¹⁷ An analysis of some of BellSouth's process problems in provisioning unbundled loops in the Birmingham, Alabama, area has been submitted to the Florida PSC, and was appended to the ALTS Comments in the South Carolina proceeding. In testimony before the Georgia Public Service Commission on November 5, 1997, ASCI testified that:

(continued...)

One incident will serve to illustrate BellSouth's problems. ACSI received an October 19, 1997, completion date for the installation of a subscriber line carrier unit in a collocated space within a BellSouth office. This unit would support 1992 unbundled access lines. Less than four weeks before the completion date, BellSouth informed ACSI that it was shifting the termination points for these lines to a frame that had not yet been constructed, and would not be completed until December 15, 1997. Until that time, ACSI can only begin testing one/tenth of its units, i.e., 190 access lines. (ACSI comments filed November 25, 1997, in this docket.) This is just one of the many similar difficulties that ACSI has encountered and describes in some detail in its Comments.

¹⁷(...continued)

"the ACSI Interconnection Agreement includes certain performance measures for provisioning of unbundled loops Specifically, BellSouth is required to provide unbundled loops with a standard five (5) minute cutover interval and within an agreed upon thirty (30) minute window. BellSouth voluntarily agreed to the terms of the ACSI Interconnection Agreement. however, BellSouth has not provided ACSI unbundled loops in compliance with the agreement.

. . . As a result many of the early customers that ACSI signed-up for service returned to BellSouth because they were unable to tolerate the service disruptions. ACSI has continued to experience problems throughout 1997 in obtaining unbundled loops from BellSouth."

Testimony of James C. Falvey, ACSI, Nov. 5, 1997, Docket 7892-U (Georgia Public Service Commission).

BellSouth's record in its region outside Louisiana thus raises serious questions concerning its ability to provision unbundled loops in a non-discriminatory fashion and in commercially viable volumes. BellSouth has plainly failed to meet its burden of proof on this issue.

**D. BellSouth Has Failed to Provision
Resale Service in Louisiana.**

Although ACSI has been provisioning resold service in Louisiana since April of 1997, BellSouth's failure to properly provision this service has led to serious market problems for ACSI. According to the July 15, 1997, letter from Mr. Jim Falvey to the Louisiana PSC, several customers have left ACSI to return to BellSouth service because of BellSouth errors and delays.

Problems include:

- Unduly long installation periods for higher revenue, and more complex, resold services.
- Refusal to provide comparable installation periods for BellSouth customers.
- Total absence of reliable FOCs.
- Absence of OSS for resale systems.
- Absence of any enforcement mechanisms in interconnection agreements by which to deter future errors.

**VI. BELL SOUTH IS ILLEGALLY REFUSING TO PAY CLECS
RECIPROCAL COMPENSATION FOR LOCAL TRAFFIC TO ISPS.**

Although checklist compliance under Section 271(c)(2)(B) expressly requires RBOCs to enter into and comply with

"reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)," a number of the RBOCs have been refusing to pay reciprocal compensation to CLECs for termination of calls to Internet Service Providers ("ISPs"), claiming that such calls are interstate in nature.¹⁸ ALTS has previously brought this situation to the attention of the Commission.¹⁹ Because ALTS arguments were thoroughly discussed in its Comments recently filed in the BellSouth South Carolina Petition ALTS will not reiterate them here except to say that the longer the RBOCs believe that they can "get away" with not paying the monies owing, the more difficult it is for CLECs attempting to gain a foothold in the market and the more anti-competitive the RBOCs action becomes. The Commission may not, either under the competitive checklist nor the public interest test, allow a Bell Operating Company to begin providing in-region interLATA service when such a large issue is still in dispute.

ALTS is certain of the validity of its position on this issue, and expects that the Commission will rule favorably upon

¹⁸ In the instant application BellSouth simply states that "BellSouth does not pay or bill local interconnection charges for traffic termination to enhanced service providers because this traffic is jurisdictionally interstate. (Brief at 65.)

¹⁹ See, e.g., letter to Regina M. Keeney from Richard J. Metzger dated June 20, 1997.

its letter request.²⁰ But at the very least, even if the Commission does not completely agree with ALTS interpretation of the Act and Commission precedent, it cannot allow a BOC to enter the new market when such an important issue has not been fully resolved.

VII. BELLSOUTH HAS REFUSED TO COMPLY WITH SECTION 252(i)'S REQUIREMENT THAT THE PROVISIONS OF INTERCONNECTION AGREEMENTS BE MADE AVAILABLE TO ALL REQUESTING CARRIERS.

As in the South Carolina application BellSouth is remarkably blunt in its Louisiana application concerning its refusal to comply with Section 252(i) of the 1996 Act (Varner Affidavit at IV.A.):

"As an alternative to the Statement, parties may choose to negotiate specific terms and conditions for certain functions or opt to utilize another CLEC's SCPSC-approved agreement. BellSouth's Statement does not provide the option for CLECs to 'pick and choose' specific components from various other CLEC agreements. With regard to this issue, the Eighth Circuit noted in its July 17 decision, 'We conclude that the FCC's interpretation conflicts with the Act's design to promote negotiated agreements. Thus, we find the FCC's "pick and choose" rule to be an unreasonable construction of the Act and vacate it for the foregoing reasons.'"

First, of course, the Eighth Circuit's construction of Section 252(i) is very much a minority view. For example, the Colorado PSC has independently concurred with the Commission's

²⁰ See ALTS' letter dated November 19, 1997, to Chairman Kennard pointing out press reports in which senior Bell Atlantic executives conceded that local calls to ISPs were local.

interpretation of Section 252(i) (In the Matter of TCG Colorado; Docket No. 96A-329T, Arbitration Decision adopted November 5, 1996, at 19):

"[W]e do not accept [US WEST's] position that § 252(i) contemplates carrier acceptance of interconnection agreements only in their entirety. While we acknowledge that the FCC's MFN holding was one of the mandates recently stayed by the Eighth Circuit Court (see footnote 1), our independent interpretation of the Act is inconsistent with USWC's contention. The language in § 252(i) compels an ILEC to make available 'any interconnection, service, or network element (emphasis added)' provided in an approved agreement to other requesting carriers 'upon the same terms and conditions as those provided in the agreement.' The plain and clear provisions of the Act do not support USWC's argument on this issue." (Emphasis supplied except as noted in the original.)

See also In the Matter of ICG Telecom Group, Docket No. 96A-356T, Arbitration Decision adopted November 13, 1996, at 18 (Colo PSC); In the Matter of the Petitions for Approval of Agreements; Minn. PSC Case No. 8731, Order No. 73010 issued November 8, 1996, p. 7. Thus, while the Commission's Section 252(i) rules have indeed been vacated, the fact remains that most forums have rejected the Eighth Circuit's interpretation of Section 252(i).

Not only is the Eighth Circuit's interpretation of Section 252(i) by far the minority view, it is singularly unpersuasive in the context of the present application. Nothing in Section 271 suggests or evens hints at a Congressional preference for negotiations. Instead, Section 271's plain emphasis is on the effective and robust opening of local telecommunications markets

to sustainable competition. The inability of all competitors to obtain similar offerings from approved interconnection agreements pursuant to Section 252(i) is manifestly an impediment to effective local competition.

The Commission need not apply its vacated Section 252(i) rules in order to follow the better line of precedent concerning the meaning of Section 252(i). ALTS requests that the Commission follow the well-reasoned interpretation of Section 252(i) contained in the decisions cited above, and, without attempting to invoke or relying upon its vacated rules, find that BellSouth is not in compliance with Section 252(i).

VIII. **BELLSOUTH HAS FAILED TO SHOW THAT ITS APPLICATION SERVES THE PUBLIC INTEREST.**

A. **The Public Interest Factors Identified in the Ameritech-Michigan 271 Order Do Not Expand the Competitive Checklist.**

In its Brief, BellSouth argues that the prohibition on expansion of the competitive checklist (contained in § 271(d)(4)) effectively precludes the Commission from considering the various factors enumerated in its Ameritech-Michigan 271 Order, particularly any aspects of local competition, under the public interest standard of § 271(d)(3)(C). In the Louisiana application BellSouth reiterates the argument made in the South Carolina brief that "[t]he point of the public interest test is . . . to allow the Commission to examine the effect on competition

of Bell company entry into the interLATA market" and that the "principal focus of the inquiry must be the market where the effects of Bell company entry would directly be felt: the interLATA market." BellSouth Brief at 84.

In essence, BellSouth argues that any Commission analysis of the effect of BellSouth entry into the interLATA market on local competition must be limited to an inquiry into whether the 14 point checklist has been satisfied, and that the public interest test is limited to an analysis of whether BOC entry would benefit the interLATA market.

BellSouth is yet again attempting to raise an issue that the Commission has squarely dealt with and rejected. In the Ameritech-Michigan 271 Order the Commission was faced with similar arguments made by BellSouth.²¹ The Commission thoroughly considered and rejected BellSouth's arguments, and found that BellSouth's reading of the statute "would effectively read the public interest requirement out of the statute, contrary to the plain language of . . . section 271, basic principles of statutory construction, and sound public policy. . . . [T]he text of the statute clearly establishes the public interest requirement as a separate, independent requirement for entry."

²¹ See Ameritech-Michigan 271 Order at ¶¶ 382-402 and n.986 (specifically identifying BellSouth's argument).

The Commission concluded that in addition to its review of the fourteen point checklist, the Commission must assure that all barriers to entry to the local telecommunications market have been eliminated, and that a BOC will continue to cooperate with new entrants after receiving in-region, interLATA authority.

The legislative history of the Act that clearly reveals that the public interest standard of § 271(d)(3)(C) was intended to confer an "oversight role" on the Commission that included local competition matters is quoted at length in the ALTS brief submitted in reference to the South Carolina application and need not be repeated here. Moreover, as the Commission found in the Ameritech-Michigan 271 Order, there are a number of issues relating to whether local competition can or will survive that are not covered by the competitive checklist. It would make no sense, for example, for the Commission to be unable to consider whether state statutes, local "franchise" requirements or other matters could injure local competition, or whether evidence exists as to whether the relevant Bell Operating Company will comply with the checklist items and signed interconnection agreements after they have entered the in-region inter-LATA market.

Accordingly, the Commission should stand firm on its determination in the Ameritech-Michigan 271 Order that it has:

"broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest" (*id.* at ¶ 383), and that, indeed, rather than focusing on the effect of entry on the long distance market, the Commission's public interest determination: "should focus on the status of market-opening measures in the relevant local exchange market." (*Id.* at ¶ 386).

Thus, the Commission should consider, among other things, the existence of barriers to entry, whether the BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements, and evidence of the BOC's commitment or lack thereof in complying with various state and federal requirements.

B. BellSouth Has Not Shown that the Publication of its SGAT Results in a Local Market that "[I]s and Will Remain" Open to Competition.

BellSouth argues that even if the Commission does follow its holding in the Ameritech-Michigan 271 Order, and examines the effect of granting the application on local markets, approval of the application is still in the public interest. In making this argument, BellSouth relies primarily on the SCPSC's finding that BellSouth entry into long distance: "will create real incentives for the major [interexchange carriers] to enter the local market

rapidly in Louisiana, because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities" (BellSouth Brief at 67).

Putting aside the fact BellSouth addresses only the incentives of the long distance companies, and disregards the seventy-five to eighty other potential competitors in Louisiana, ALTS points out that BellSouth offers no quantification of the market erosion that large interexchange carriers might suffer from BellSouth's entry to support of this claim. Unless BellSouth can show that the economic effect of its entry would be so great as to outweigh the high cost of local entry (made even higher by BellSouth's defiance of Section 271's requirements), BellSouth cannot demonstrate that local competition will benefit from changed IXC incentives if its application were granted.

CONCLUSION

For the foregoing reasons, ALTS requests that BellSouth's

Application for In-Region InterLATA authority in Louisiana be
denied.

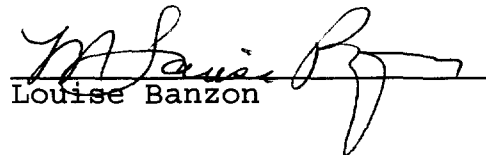
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 1997, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.


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